

# Notice of Allowability

Application No.

10/796,742

Examiner

Tony G. Soohoo

Applicant(s)

GERBER, ERNEST C.

Art Unit

1723

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the communication of 9-12-2005.
2. ☒ The allowed claim(s) is/are Renumbered claims 1-53 (see detailed action).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892) *TGS*
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08), *TGS*  
Paper No./Mail Date 3-9-04
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment *TGS*
8. ☒ Examiner's Statement of Reasons for Allowance *TGS*
9. ☐ Other \_\_\_\_\_.

*NOTE:  
DRAWINGS  
FILED 3/8/2006  
APPROVED -  
TGS  
1723*

**1. Claim numbering**

2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 54-65 been renumbered 53-64 (claim 53 was omitted by an obvious clerical error).

***Election/Restrictions***

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims (renumbered) 1-53, drawn to a device for blending solid ingredients with a base product, classified in class 366, subclass 177.1.
- II. Claims (renumbered) 53- 64, drawn to a method of producing frozen edible product, classified in class 426, subclass 565.

The inventions are distinct, each from the other because of the following reasons:

4. Inventions Group II and Group I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus may be used to blend ingredients into a chilled product such as yogurt, or may be used to blend plastic resin into an extruder.

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5. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

6. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

7. During a telephone conversation with J. Naughton on 9-7-2006 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-53.

#### **EXAMINER'S AMENDMENT**

8. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with J. Naughton on September 12, 2006.

9. The application has been amended as follows:

Please cancel claims non-elected claims 53-64 (renumbered, previously 54-65) without prejudice.

Please amend claims 1, and 24 as follows:

**Claim 1 (amended).**

Apparatus for dispensing a chilled viscous confection comprising a blend of frozen edible base product and edible ingredient solids, the apparatus comprising:

a receiver for stationary attachment to a freezer producing a frozen edible base product

and for receiving the frozen base product from a dispensing outlet of the freezer;

said receiver having means for coupling to the dispensing outlet of the freezer;

said receiver having a blending chamber;

a conveyor auger having a portion in said blending chamber;

an auger drive motor coupled to said auger for driving said auger in rotation;

a plurality of containers for ingredient solids;

a plurality of valves, each of said valves being associated with a different one of said containers for controlling delivery of solids from said containers;

a dispensing hopper associated with said valves to receive solids delivered from said containers;

a passageway from said dispensing hopper to said blending chamber for delivery of solids from said dispensing hopper to said blending chamber;

a plurality of valve drive motors, each of said valve drive motors being coupled to a different one of said valves;

a controller coupled to said valve drive motors and having a selector for selecting and enabling selected ones of said valve drive motors to operate in sequence;

a switch coupled to said controller and operable to activate said controller to operate selected ones of said valve drive motors to operate valves coupled to selected ones of said valves drive motors, to deliver solids from containers associated with said valves which are coupled to selected ones of said ones of said drive motors, to said dispensing hopper for delivery to said blending chamber for said auger to move said delivered solids into said base product during the dispensing of said base product from said freezer.

**Claim 24 (amended).**

Apparatus for blending edible ingredient solids into a flowing, frozen edible base product and comprising:

a body [adapted for] including means for coupling to a dispenser outlet of a freezer for said base product, said body having a blended product outlet, and said body having a spindle tube for passage of said base product from a dispenser outlet of a freezer through said spindle tube toward said blended product outlet, said spindle tube having an upper end and having a lower end;

a storage assembly for storage of ingredient solids for blending with said base product passed through said spindle tube;

a transfer hopper coupled to said storage assembly and to said body for guiding said solids;

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said body including a blender hopper coupled to said transfer hopper for receiving ingredient solids from said transfer hopper and for introducing the ingredient solids to said base product;

a blending chamber in said blender hopper between said spindle tube and said blended product outlet;

a blending auger in said blender hopper and encircling at least a portion of said spindle tube and mounted on said spindle tube for rotation on an axis of rotation for moving said solids toward said blended product outlet, said auger having an upper end and having a lower end;

a blender motor coupled to said auger for rotation of said auger on said axis;

valves in said storage assembly and operable, when actuated, for release of stored ingredient solids from said storage assembly to said transfer hopper; and

a controller coupled to said blender motor and to said valves to operate said auger to move released ingredient solids into said base product during passage of said base product from said tube to said blended product outlet.

[see next page]

**Please renumber original claims 54-65, and its dependent claims as *claims* 53-64 in order to preserve the consecutive numbering of the claims (due to a clerical omission of claim number 53) as renumbered claims 53-64 are as follows**

**Claim 53 (renumbered from original claim 54):**



**Claim 53. The apparatus of claim 52 and wherein:**

**said lower ends of said flights have an internal part-cylindrical surface at a radius from said axis substantially equal to the radius of the inner cylindrical surface of said auger core above said cut-outs.**

(Note: the renumbered claims 54-64 have been cancelled, but are being presented to clarify the numbering of the claims upon filing of any divisional or child application):

[see next page]

**Claim 54.**            **A method for blending dry edible solid ingredients with a frozen base product**  
**(cancelled)**  
**comprising:**

**starting a flow of the frozen base product from a freezer outlet to a blending chamber to**  
**flow through the chamber to a blended product outlet;**

**selecting a plurality of types of edible ingredient solids and entering solids of the**  
**selected types into said blending chamber;**

**augering said selected types solids into flow of said base product when flowing through**  
**said chamber and thereby producing a blend of said solids in said frozen base product; and**

**delivering said blend out of said blending chamber through said blended product outlet..**

**Claim 55.**  
**(cancelled)**            **The method of claim 54 and further comprising:**

**storing in containers, a plurality of solids of different types of edible ingredients, each**  
**different type in a different container;**

**selecting certain ones of said different types for blending;**

**releasing the solids of the selected types from those of said containers storing said**  
**selected types, into the flow of said frozen-base product; and**

**blending the solids of the selected types into the flow of said frozen-base product.**

**Claim 56.**  
**(cancelled)**            **The method of claim 55 and further comprising:**

**rotating transfer impellers by motor drivers for releasing said solids.**



Claim 57. (cancelled)

The method of claim 55 and further comprising:  
releasing said solids of said selected types in sequence of one type following another type.

Claim 58. (cancelled)

The method of claim 57 and further comprising:  
predetermining the said sequence prior to starting the flow of said frozen base product;  
releasing each of said selected types for a certain period, and releasing all selected types in a release sequence cycle; and  
repeating said sequence cycles while said frozen base product continues to flow to the blending chamber.

Claim 59. (cancelled)

The method of claim 58 and further comprising:  
actuating a device for starting the flow of said frozen base product from the freezer outlet; and  
responding to the actuation of the device to initiate the releasing and augering of said solids into said blending chamber.

Claim 60. (cancelled)

The method of claim 59 and further comprising:  
using actuation of said device to initiate operation of both a blender motor and the said sequence cycle.

**Claim 61. (cancelled) The method of claim 54 and further comprising:**

**using a rotary auger with spiral flights formed around a hollow core with a longitudinal axis; and**

**flowing said frozen base product from said freezer outlet downward through said core toward said blended product outlet.**

**Claim 62. (cancelled) The method of claim 61 and further comprising:**

**providing a wall having an inside surface circular around said axis and surrounding said auger;**

**providing matching profiles of said auger and said inside surface thereby fitting said auger to said inside surface;**

**sweeping downward on said surface with said auger flights while rotating said auger relative to said wall, on said axis;**

**using a conical portion of said interior surface to guide said solids inward as they are swept downward by said rotating auger, into said frozen base product flowing downward from said core through said chamber to said blended product outlet.**

**Claim 63.  
(cancelled)**

**The method of claim 62 and further comprising:**

**admitting solids swept downward, into said flowing frozen base product, through cutouts between flights in said core.**

Claim 64. (cancelled) **The method of claim 63 and further comprising:**

**enabling solids guided inward into said cutouts as said auger is rotated, to move upward relative to the bottom of the flight above the cutout at the location of entry of the solid into the cutout, and move inwardly along a curved surface of said auger toward said axis and into said flowing frozen base product.**

### **Reasons for allowance**

10. The following is an examiner's statement of reasons for allowance: The claims distinguish over the prior art fails to show or render obvious the combination of a body housing with coupling to a freezer dispenser outlet, solid ingredient storage assembly containers, a transfer hopper, a blending chamber with auger, and the cooperative provision of a motor with a controller in operation with switched valves so as to operate a device to delivery solids into the base product during dispensing of the base product from the freezer to the product outlet. An analysis of the prior art of the feed systems cited with a blend chamber and control supply, it is deemed that proposal of a combination with that of a coupling means and control to that of a base product freezer outlet dispenser would involve impermissible hindsight.

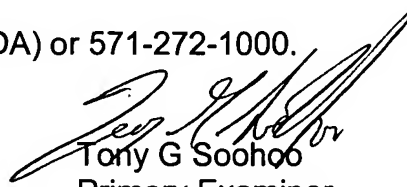
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 8AM-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Tony G Soohoo  
Primary Examiner  
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